



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/543,132

04/17/2006

Wilhelmus Maria Van Der Krieken

ARNOLDS-09838

2629

7590  
Christine A Lekutis  
Medlen & Carroll  
Suite 350  
101 Howard Street  
San Francisco, CA 94105

06/30/2008

EXAMINER

BELL, KENT L

ART UNIT

PAPER NUMBER

1661

MAIL DATE

DELIVERY MODE

06/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/543,132	<b>Applicant(s)</b> VAN DER KRIEKEN ET AL.	
	<b>Examiner</b> Kent L. Bell	<b>Art Unit</b> 1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on papers filed March 3, 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 and 28-32 is/are allowed.
- 6) ☒ Claim(s) 20-27, and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **Status of Application**

The amendment filed March 3, 2008 has been carefully considered. However, an Office Action follows.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The rejection to Claims 20, 22-27, and 33 are maintained for the reasons set forth in the previous Office action mailed November 28, 2007 set forth below.

Claims 20 and 22 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Nieuwenhuis et al (6,472,219).

Nieuwenhuis et al. teach a plant or plant part carrying an identification label, consisting of one or more types of fluorescent tracer molecules produced by a method comprising, contacting a plant or plant part with a product, comprising one or more types of tracer molecules, and allowing the plant or plant part to take up the tracer

Art Unit: 1661

molecules either inside the plant or plant parts or on the surface thereof (Col. 2, lines 21-37).

Claims 23-27, and 33 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Nieuwenhuis et al (6,472,219).

Nieuwenhuis et al. teach a product (flower food) for providing a plant or plant part with an identification label, which product comprises one or more types of tracer molecules wherein the tracer molecules are fluorescent (Col. 2, lines 21-37).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nieuwenhuis et al. (6,472,219).

Nieuwenhuis et al. is silent as to wherein the tracer molecule is Photine PAQ. Examiner respectfully submits that Nieuwenhuis et al. in Column 4 sets forth many if not all of the tracer molecules disclosed in Claim 21 except for Photine PAQ, however, because Photine PAQ is a well known tracer molecule and there is no significant difference in function between Photine PAQ and any of the other tracer molecules disclosed in Claim 21, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute Photine PAQ for any of the tracer molecules set forth in Claim 21 to obtain the desired results without undue experimentation.

### ***Response to Arguments***

Applicant states the reference Nieuwenhuis et al. (6,472,219) does not teach or suggest that a plant or plant part takes up an inert fluorescent label, and therefore does not teach or suggest methods or products for providing plant or plant parts with an identification label, or plants or plant parts comprising such labels. The Examiner believes Nieuwenhuis et al. (6,472,219) does teach the limitation previously stated which is set forth in the rejection above. Applicants amendment to these claims does not provide a patentable difference to the product claimed. Examiner respectfully submits that Nieuwenhuis et al. (6,472,219) clearly teaches a plant part(cut flowers)

which carries an identification label, wherein the identification label includes fluorescent tracer molecules. Therefore Nieuwenhuis et al. (6,472,219) clearly teaches the product claimed in claims 20 and 23. Examiner respectfully submits that the limitations “and wherein the identification label shows certain properties of the plant or plant part upon visualization” in claim 20 are functional limitations and do not provide further patentable weight to the product claimed.

Applicant states the reference Nieuwenhuis et al. (6,472,219) does not teach or suggest all elements of Claims 1 and 20 from which Claim 21 depends. Applicant also states the disclosure of Nieuwenhuis is simply directed to monitoring the concentration of treatment products in water. Applicant further states the recitation "there is no significant difference in function between Photine PAQ and any of the other tracer molecules disclosed in Claim 21" is unsupported. The Examiner believes Nieuwenhuis et al. (6,472,219) does teach the limitations previously stated which is set forth in the rejection above. Applicant's amendment to these claims does not provide a patentable difference to the product claimed.

#### **Allowable Subject Matter**

Claims 1-19 and 28-32 are allowed.

Examiner has reviewed applicant's arguments regarding claims 1-19 and 28-32 and is persuaded that Nieuwenhuis et al. (6,472,219) does not teach the method limitations of claim 1. Claims 2-19 and 28-32 depend on claim 1 and hence are also allowed.

### **Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

/Kent L. Bell/

Primary Examiner, Art Unit 1661